



FH
1145932215

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

██████████
c/o Brenda Haskins, Attorney
3866 Johns Street
Madison, WI 53714

AMENDED DECISION

MRA/139764

PRELIMINARY RECITALS

Pursuant to a petition filed March 20, 2012, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03, to review a decision by the Dane County Department of Human Services in regard to Medical Assistance, a hearing was held on April 24, 2012, at Madison, Wisconsin. The record was held open for ten days, during which period petitioner submitted a packet of documents which has been marked as an additional exhibit (exhibit #4).

This is an amended decision issued under the authority of Wis. Stat. § 227.49 based on discovery of a material error of fact. This Decision replaces the previously issued May 3, 2012 Decision in its entirety.

The Division of Hearings and Appeals issued a decision in this matter dated May 3, 2012. In that Decision, I found the child support payments (\$650 per month and credit card payments of \$50 per month (stemming from the petitioner's divorce settlement)) to be allowable expenses of the community spouse. I so found because these were claimed at the hearing with specificity by the petitioner and, at that time, the representative for the Department did not object to the inclusion of these expenses. Following the issuance of a Decision in this matter, the representative for the Department contacted me to inform me that these expenses are, in fact, part of the calculation of the petitioner's patient liability to the nursing home. Counsel for petitioner did not contest this and admitted she was unaware that these costs are part of that calculation. This amended decision removes the child support and credit card expense from the group of allowable expenses for the community spouse and arrives at a different conclusion of law based on this information from the county not previously offered.

The issue for determination is whether the community spouse income allocation should be raised in order to provide for basic and necessary expenses of the community spouse.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

██████████
c/o Brenda Haskins, Attorney
3866 Johns Street
Madison, WI 53714

Petitioner's Representative:

Attorney Brenda R. Haskins
3866 Johns St.
Madison, WI 53714

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Elliott Williams
Dane County Department of Human Services
1819 Aberg Avenue
Suite D
Madison, WI 53704-6343

ADMINISTRATIVE LAW JUDGE:
John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) was a resident of Dane County and resided in a nursing home beginning January 31, 2012. He died on April 7, 2012. His wife, the community spouse, resides in the family home with petitioner’s biological children from a previous marriage (50% custody): [REDACTED] and [REDACTED] (both 15 years old) and [REDACTED] (18 years old), and another minor child whom petitioner adopted: [REDACTED] (who lives in the community home 100% of the time).
2. Petitioner was legally obligated to pay child support for the three biological children. This child support obligation is part of the calculation of the petitioner’s liability to the nursing home.
3. Petitioner’s monthly income totaled \$4,883.51.
4. Petitioner’s community spouse had average monthly gross earned income during the period of institutionalization of \$1,975.29 per month.
5. Each of the four children receives \$256 in social security per month.
6. Payment of the following expenses are basic and necessary for the maintenance of the community spouse:

MORTGAGE (incl. taxes and ins.)	1,991.00
MG&E	77.00
PHONE (landline)	28.12
UTILITIES ([REDACTED])	230.00
FOOD	600.00
CAR INSURANCE ([REDACTED])	50.43
CAR INSURANCE ([REDACTED])	64.85
CAR MAINTENANCE	50.00
INTERNET	40.00
HAIRCUTS	100.00
CAP. ONE CREDIT CARD ([REDACTED])	73.00
CAP ONE CREDIT CARD ([REDACTED])	67.00
ORTHODONTIC ([REDACTED])	149.00
STUDENT LOAN ([REDACTED])	100.00

SEARS CREDIT	25.00
CAR LOAN	238.00
CAR LICENSING	15.00
FUEL	240.00
CAR MAINTENANCE	50.00
CLOTHING (children)	100.00
CLOTHING (████████)	25.00
SCHOOL SUPPLIES	60.00
VOICE/SOCCER/TRUMPET	56.00
HEALTH INSURANCE	52.00
MED CO-PAYS	125.00
KIDS ENTERTAINMENT	100.00
HOME REPAIRS	100.00
SNOW REMOVAL	162.42
LAUNDRY	<u>50.00</u>
TOTAL	\$5,043.82

7. The following expenses claimed by petitioner's community spouse at the hearing are not basic and necessary:
- Child support monthly obligation.
 - Payment for credit card which was not discharged in bankruptcy and which was ordered as a financial obligation of petitioner as part of divorce.
 - Child support arrearage accrued prior to petitioner's admission to a nursing home.
 - Five cell phones for ██████████ and each child.
 - Cable television.
 - Restaurant bills.
 - Pet costs.
 - Health club memberships.
 - Donations to church.
 - Other expenses deemed excessive.
8. The current maximum income allocation to the community spouse is the maximum \$2,841. Each of the four children also is allocated a maximum community dependent income allowance of \$612.92 (of which \$256 is consumed by the social security benefit to each) resulting in an actual allocation for each dependent of \$356.92. Thus, the family's total maximum income allowance is \$5,292.68.

DISCUSSION

Spousal impoverishment is an MA policy, created pursuant to the Medicare Catastrophic Coverage Act of 1988, which allows persons to retain assets and income that are above the regular MA financial limits. Spousal impoverishment policy applies only to institutionalized persons and their community spouses.

After an institutionalized person is found eligible, he may allocate some of his income to the community spouse if the community spouse's gross monthly income does not exceed the Maximum Community Spouse Income Allocation (CSIA) of \$2,841. See *Medicaid Eligibility Handbook* § 18.6.2. In this case, the income of the community spouse is \$1,975.29 per month.¹ The Department in its calculations up to this point had been using the standard earned income of the community spouse which was higher and therefore has not allocated any income from the institutionalized spouse's net income to her as the community spouse. The actual earned income during the period of institutionalization was much lower as the community spouse worked fewer hours during the petitioner's last days. This information was only provided after the hearing but will result in some transfer of income to the community spouse based on this new information alone.

The community spouse argues that she cannot get by on the \$2,841 CSIA for herself.² The county agency does not have discretion to allocate income to her that would cause her "income plus allocation" total to exceed \$2,841. However, I have some limited discretion. The statute allows the allocation to be raised by an administrative law judge *to avert financial duress, created by exceptional circumstances*, for the community spouse. See Wis. Stat. § 49.455(8)(c). The Administrative Code explains that "exceptional circumstances resulting in financial duress" means situations that result in the community spouse not being able to provide for his or her own necessary and basic maintenance needs." Wis. Admin. Code § DHS 103.075(8)(c).

In calculating her basic and necessary expenses (*see* Finding of Fact #4), I modified some of the claimed/requested expenses. I am mindful that in determining "basic and necessary" expenses it is ultimately taxpayer dollars that will fund the payment of those expenses, even if indirectly.

¹ Petitioner offers the figure of \$1,956.83 in exhibit #4 as the monthly average of net earned income of the community spouse. This number is also used in petitioner's worksheet offered as part of this exhibit. This is an error by petitioner as the worksheet and related calculation of income to be transferred requires application of the community spouse's gross income. Using the pay stubs provided by petitioner in exhibit #4 I calculate her gross income as follows:

January 31 – February 10	1,144.08 (total gross prorated to daily figure of 127.12)
February 10 – February 24	1,613.45
February 25 – March 9	1,064.77
March 10 – March 23	385.71
March 23 – April 7	385.71 (estimated as no supporting document provided)

This results in an average weekly gross income of \$459.37. Using a figure of 4.3 weeks in one month results in an average gross monthly income for the community spouse during the period of petitioner's institutionalization of \$1,975.29.

² In the written submission filed after the hearing, petitioner asserts that:

the law allows the community spouse to receive the lesser of the following as a monthly income: \$2841 or \$2451.67 plus excess shelter allowances. In this case the couple's shelter costs are \$2352.47...thus our starting point for income is \$4068.64....Thus, at a minimum there should be a transfer of \$2111.81 from Mr. McGuire to Ms. McGuire.

Petitioner misapplies the rules. Petitioner correctly states that "the law allows the community spouse to receive *the lesser* of the following as a monthly income: \$2841 or \$2451.67 plus excess shelter allowances." See *Medicaid Eligibility Handbook* § 18.6.2. In this case the lesser of these two values is \$2,841 which is the number the Department has already been applying. This misapplication also makes petitioner's worksheet calculations in exhibit #4 and the related conclusions irrelevant.

This is the reason for my disallowance of such items as restaurant bills, health club memberships, cable television, donations to church, and pet maintenance.

Exhibit #1, offered by petitioner, suggests a shortfall for the community spouse amounting to \$3,831. Exhibit #4 revises these numbers to reflect a shortfall of \$4,904.10. In both of these calculations, petitioner arrives at the shortfall number by starting with the sum of all claimed expenses and subtracting the earned income of the community spouse. But this position fails to consider the maximum dependent allowances for each of the children in the amount of \$612.92. *See Medicaid Eligibility Handbook* § 18.6.3. Each child receives \$256 in social security. This means that the remaining \$356.92 is already an allowance from petitioner's income totaling \$1,427.68 monthly to the family as the agency representative testified. Petitioner did not consider the social security or the dependent allowance in her calculations relating to the shortfall in the calculations she offered at the hearing or submitted subsequently. Certainly this social security plus dependent allowance should be used to defray the various expenses for the care and welfare of the dependent children such as those claimed by the community spouse.³

After careful consideration, I find that the basic and necessary expenses total \$5,043.82. The maximum CSIA (\$2,841) joined with the dependents' maximum income allowances (\$612.92 x 4 = \$2,451.68) totals \$5,292.68. There is, therefore, no shortfall causing financial duress for the community spouse. There is no basis for increasing the CSIA.

CONCLUSIONS OF LAW

Petitioner has not established that an increase in the CSIA is required to avoid duress.

THEREFORE, it is ORDERED

The matter is remanded to the Department with the following instructions:

1. The CSIA shall remain at \$2,841.
2. The Department's calculations shall utilize the figure of \$1,975.29 as the community spouse's gross monthly income figure during the period of petitioner's institutionalization.
3. With these instructions the Department shall recalculate the cost of care and the transfer of income from petitioner to the community spouse.

The above orders shall be completed within 10 days of the date of this decision.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have

³ The record indicates that [REDACTED] the 18 year old daughter, takes her social security check and "does what she wants with it." Despite that family custom, the amount of that government payment to her certainly must be counted to offset expenses if petitioner is claiming expenses for [REDACTED] car insurance, groceries, gasoline, car maintenance, Internet service, clothing, and haircuts.

found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of
Madison, Wisconsin, this 14th day of May,
2012

/s/John P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals

c: 